IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 34

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291,
Petitioner,

—v.—

PHILADELPHIA MARINE TRADE ASSOCIATION,
Respondents.

No. 78

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291,
Its Officers and Members,
Petitioners,

—v.—

PHILADELPHIA MARINE TRADE ASSOCIATION,
Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF OF MARITIME SERVICE COMMITTEE, INC. AND TANKER SERVICE COMMITTEE, INC., *AMICI CURIAE*

EDWARD SILVER
GEORGE G. GALLANTZ
Counsel for Tanker Service Committee, Inc. and Maritime Service Committee, Inc., Amici Curiae
300 Park Avenue
New York, New York 10022

Of Counsel:

SAUL G. KRAMER
PROSKAUER ROSE GOETZ & MENDELSOHN
300 Park Avenue
New York, New York 10022

SUBJECT INDEX—

TABLE OF AUTHORITIES

Cases:

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 34

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291,

Petitioner,

—v.—

PHILADELPHIA MARINE TRADE ASSOCIATION,

Respondents.

No. 78

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291, Its Officers and Members,

Petitioners,

—v.—

PHILADELPHIA MARINE TRADE ASSOCIATION,

Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF OF MARITIME SERVICE COMMITTEE, INC. AND TANKER SERVICE COMMITTEE, INC., *AMICI CURIAE*

STATEMENT OF INTEREST

The Maritime Service Committee, Inc.* (hereafter "MSC") and the Tanker Service Committee, Inc. (hereafter

* This brief *amici curiae* is filed pursuant to consents, given by all parties to the above titled cases, mailed to the Deputy Clerk of this Court on August 7, 1967.

"TSC") are associations of employers whose members operate United States flag passenger, dry cargo and tanker vessels out of Atlantic and Gulf ports, including the Port of Philadelphia where this case arose.* The fleets operated by MSC and TSC members include more than 335 vessels, manned by more than 3,600 licensed officers and 12,500 unlicensed crewmen. These employees are represented by eight labor organizations under contracts negotiated and administered by MSC and TSC.

Members of MSC and TSC also, either directly or indirectly, provide employment for thousands of shoreside employees who perform various tasks that must be completed on schedule if efficient, effective and economical vessel operation and cargo handling are to be assured. Of particular importance in these cases is the orderly and expeditious performance of all longshoring functions, which are usually under the aegis of stevedore companies whose employees are represented on the Atlantic and Gulf Coasts by various locals of the International Longshoremen's Association, including the petitioner, Local 1291.

THE PRINCIPAL ISSUE

The principal issue in these proceedings is whether §4(a) of the Norris-LaGuardia Act (47 Stat. 70, 29 U. S. C.

---

* The members of MSC, all of whom operate passenger and/or dry cargo vessels, are: Farrell Lines, Inc., Grace Line, Inc., Gulf & South American Steamship Co., Inc., Lykes Bros. Steamship Co., Inc., Marine Transport Lines, Inc., Moore-McCormack Lines, Inc., United Fruit Company and United States Lines, Inc.

The members of TSC, all of whom operate tanker vessels are: Amoco Shipping Company, Gulf Oil Corporation, Hess Oil & Chemical Corp., Keystone Shipping Company, Marine Transport Lines, Inc., Mathiasen's Tanker Industries, Inc., National Bulk Carriers, Inc., The Pure Oil Company, Rye Marine Corporation, Sinclair Oil Corporation, Texaco, Inc., Texas City Refining, Inc., Trinidad Corp., and United Maritime Corporation.

§104(a)) precluded the District Court from ordering the petitioner (hereafter sometimes the "Union") specifically to enforce and comply with an arbitration award which the parties had expressly agreed would be final and binding (No. 34, R. 114-115).

The issue before the arbitrator was whether subparagraphs 5 and 6 of Section 10 of the parties' association-wide settlement memorandum

> "are to be considered together so that the Employer's right to set back a gang from 8:00 AM to 1:00 PM is conditioned *solely* upon the non-arrival of a vessel in port, or is the Employer's right under Section 10, subparagraph 6 to set back a gang without qualification?" (No. 34, R. 20)

Respondent PMTA contended that subparagraph 6 of Section 10 established an unqualified right to set back gang starting times from 8:00 A.M. to 1:00 P.M., provided that one hour's pay was guaranteed for the morning period and four hours' pay was guaranteed for the afternoon period (No. 34, R. 20-22). The Union maintained that subparagraph 6 was limited so that a gang's starting time could be set back only when a vessel failed to arrive in port. According to petitioner, if a gang's starting time was set back to 1:00 P.M. for any other reason, the employees were entitled to four hours' pay for the morning period (No. 34, R. 26).

On June 11, 1965, after hearings in which both parties offered evidence to establish bargaining history, the arbitrator issued his award that subparagraph 6 was controlling and that petitioner's contention, that the subparagraph "can only be invoked by the Employer because of non-arrival of a vessel in port, is denied." (No. 34, R. 30-31)

On August 2, 1965, alleging that petitioner had refused to comply with the award, respondent commenced an action in the United States District Court for the Eastern District of Pennsylvania under §301 of the Taft-Hartley Act (61 Stat. 156, 29 U. S. C. §185), seeking an order enforcing it (No. 34, R. 3-6). At hearings held on August 3 and September 15, 1965, it was established that petitioner had refused to obey the award (No. 34, R. 65-66, 93-94, 96-97).

The Union called no witnesses in the District Court, but moved to dismiss, alleging, among other things, that

> "The relief sought by the plaintiff is, in fact, injunctive relief which Federal Courts are without jurisdiction to grant by virtue of Section 4 of the Norris-LaGuardia Act, 29 U. S. C., Sec. 104. See *Sinclair Refining Company v. Samuel M. Atkinson, et al.*, 370 U. S. 195, 8 L. Ed. 2d 440, 82 S. Ct. 1328." (No. 34, R. 32)

On September 15, 1965, the court issued an order that the arbitration award "be specifically enforced by defendant, International Longshoremen's Association Local 1291, and the said defendant is hereby ordered to comply with and to abide by the said Award." (No. 34, R. 113) On August 11, 1966, the Court of Appeals for the Third Circuit affirmed the judgment of the District Court (No. 34, R. 127). In its opinion, the court explained that §4(a) of the Norris-LaGuardia Act, as applied by this Court in *Sinclair Refining Co.* v. *Atkinson*, 370 U. S. 195 (1962), had not deprived the District Court of jurisdiction:

> "Under the facts and the law, the holding of the District Court that it had the jurisdiction to enforce the crystal clear judgment of the Arbitrator was sound and right. It was not in conflict with the Norris-La-

> Guardia Act but completely within the Lincoln Mills and Steelworkers opinions, supra, and a vital part of the all important enforcement of the specific performance of the admittedly agreed to arbitration clause in the labor contract before us." (No. 34, R. 123)

While petitioner's appeal had been pending, a contempt proceeding was brought against it by respondent. The contempt was premised upon the precipitation by the Union's officials of a mass refusal by petitioner's members to accept the employers' right to set back as provided for in the award (No. 78, R. 4, 7, 70, 101-104, 116, 123, 149). Ultimately, virtually all longshore operations in the Port of Philadelphia were tied up (No. 78, R. 5). On March 1, 1966, after a hearing had been held, the District Court adjudged the petitioner in civil contempt and fined it $100,000 a day (No. 74, R. 150-151). The Court of Appeals affirmed (No. 78, R. 157-60).

In No. 34, this Court granted certiorari to review the judgment of the Court of Appeals affirming the order of the District Court enforcing the arbitration award (No. 34, R. 129). In No. 78, certiorari was granted to review the judgment of the Court of Appeals affirming the contempt order (No. 78, R. 162).

BASIS OF INTEREST

Petitioner argues that §4(a) of the Norris-LaGuardia Act, as applied by this Court in the *Sinclair* case, precludes the federal courts from specifically enforcing arbitration awards and exercising their contempt powers to secure compliance with such mandates. Despite its agreement to final and binding arbitration, petitioner says in effect, that it is free to engage in concerted refusals to work

under the contractual conditions ruled applicable by an arbitrator any time it disagrees with his award.

Disputes arising under labor contracts are thus to be tried twice: first in the arbitral forum and then by economic combat, subject only to time-consuming and generally inadequate damage proceedings. The inevitable results would be chaos during the administration of labor agreements, a gradual abandonment of the arbitration process, and a return to economic warfare to settle matters that could and should otherwise be disposed of under the emerging common law of the labor contract. The *amici* submitting this brief are vitally interested in preventing this return to industrial anarchy.

The maritime industry on the East and Gulf Coasts, in which respondent and these *amici* are major factors, has long been plagued by highly volatile labor relationships, both aboard ships and at shore side. Because of the nature of the business, maritime employers are particularly vulnerable to unannounced work stoppages over arbitrable grievances arising during the term of their contracts. To meet this problem—to insure that disputes that arise under the contracts are decided by arbitration rather than through economic warfare—the parties have included emergency procedures in their contracts empowering arbitrators expeditiously to resolve such disputes.

To illustrate, Section 28 of the PMTA agreement authorizes the permanent arbitrator, upon request of either party, to visit the work place and render "an immediate decision at job site" (No. 34, R. 13). And, in those cases where the arbitrator is not requested to visit the job, his decision must be rendered within 48 hours of the conclusion of the hearings (No. 34, R. 14). Similarly, the

contracts administered by these *amici* contain provisions for expedited arbitration and procedures whereby an alleged breach of the no-strike clause may be brought before an arbitrator within 24 hours, with the arbitrator being empowered to issue an order requiring the affected union to cease and desist.

These arbitration clauses, hammered out in collective bargaining, are expressly designed expeditiously and finally to settle any kind of dispute that can arise under the contract. Were the rationale of the *Sinclair* case to prevent enforcement of awards made under these clauses, they would become nothing more than unenforceable scraps of paper and the arbitration machinery would for all practical purposes be rendered meaningless, notwithstanding the acknowledged intent of the parties who purposely designed them to assure stability in this important industry.

These *amici* therefore would persuade this Court that this absurd result is not required by the Norris-LaGuardia Act and that no support for it can be found in *Sinclair*—a case in which arbitration could not have and had not been invoked by the employer, and which had nothing to do with the enforcement of an arbitration award. On the contrary, the judgment of the District Court enforcing the arbitration award here in issue is in accord with the Nation's labor policy as reflected in the Norris-LaGuardia Act itself, in the *Sinclair* case, in the Taft-Hartley Act, and in a host of decisions by this Court that recognize arbitration—enforceable, effective and voluntarily agreed upon—to be a "kingpin of federal labor policy." The Third Circuit so held in No. 34, and the New York State Court of Appeals reached a similar conclusion under that State's little Norris-LaGuardia Act in *Matter of Ruppert (Egelhofer)*, 3 N. Y. 2d 576, 148 N. E. 2d 129, 170 N. Y. S. 2d 785 (1958).

The same conclusion should be reached by this Court so that relationships evolving under labor agreements throughout the maritime industry, as well as in a host of other businesses throughout the Nation, may continue to proceed and to become stabilized under the emerging law of the labor contract being propounded by arbitrators, rather than be deranged by the use of economic force whenever a union decides to reject any award of an arbitrator that requires maintenance of the employment relationship.

SUMMARY OF ARGUMENT

I.

Norris-LaGuardia, and particularly §8, favors determination of labor disputes by voluntary arbitration. Obviously such determinations can be effective only if awards emanating from that process are to be treated as enforceable. Enforcement of the award in this case conformed with the purpose of Norris-LaGuardia, and did not involve treating any part of it as having been repealed.

Pertinent precedent in this Court is to that effect. *Sinclair,* as we show in Point III, had nothing to do with an arbitration award. In cases dealing with arbitration, this Court has held arbitration clauses to be a major factor in the achievement of industrial peace, and a recognized *quid pro quo* for unions' agreements not to strike. It has held also that the established policy of the United States, favoring arbitration in labor relations, can be effectuated only if the means chosen by the parties for the determination of controversies "is given full play."

The decisions of the court below did not ignore this major policy consideration when it refused to treat §4(a)

of the Norris-LaGuardia Act as depriving the District Court of jurisdiction. The federal courts, led by this Court, have time and again enforced arbitration awards commanding employers to reinstate employees, and thus to remain in a "relationship of employment" with their employees, as well as awards proscribing removal of plants, and the like.

Confirmation of the award in issue was thus nothing more than a logical application of the principles of those decisions in a correlative area. The Court of Appeals recognized this most basic principle and thus avoided a mechanistic and unwarranted application of §4(a) of the Norris-LaGuardia Act, which would have run afoul of our national labor policy, premised as it is upon effective and enforceable arbitration of all contract disputes. It also avoided limiting both unions and employers to an inadequate, time-consuming and exacerbating damage remedy whenever an arbitration award explicitly or implicitly commands continued maintenance of an employment relationship. Such awards are frequently issued. The inability to enforce them in federal courts would burden individual employees and unions as often as it would burden employers.

II.

The primary purpose of the Norris-LaGuardia Act is to relieve federal judges of the "impossible task" of deciding the merits of labor disputes. The Act was adopted to take them out of the business of weighing equities in such matters. This suit was not an attempt to put the courts back into that business.

Once an arbitrator has issued his award, the courts must confirm it regardless of their view of the equities and even if they would have reached a contrary conclusion. This is

now an established principle of the federal law of the labor contract. Therefore, when the arbitrator has acted, the dispute is ended and the only area open to inquiry is whether the arbitrator exceeded his jurisdiction or was guilty of misconduct.

In these circumstances, the court below was not asked to issue an "injunction" in a "case arising out of a labor dispute." That dispute had been laid to rest by the arbitrator and an order directing compliance with the award would not be premised upon any of the substantive elements traditionally associated with an "injunction" and explicitly listed in §7 of the Norris-LaGuardia Act. Those elements have been held by this Court to be inapposite to an action for specific performance of the covenant to arbitrate. *A fortiori* such requirements are equally irrelevant to an application to enforce an arbitration award. What is relevant is the congressional policy embodied in §8 of the Norris-LaGuardia Act, favoring the resolution of labor disputes in arbitration. To apply §4(a) of the Act to preclude enforcement of such awards would make the Act self-defeating.

III.

Petitioner's reliance on the *Sinclair* case lies at the root of its error, and evidences its failure to comprehend that case, the policy of the Norris-LaGuardia Act, and the role of labor arbitration in the scheme of our national labor policy under Taft-Hartley.

In *Sinclair,* the Court was not asked to confirm the award of an arbitrator ordering the union to cease violations of a no-strike clause, but to determine the issues in the first instance and to issue an injunction directly enforcing the

no-strike clause. To comply with that request, it would have had to assess the irreparability of the injury sustained, to determine whether legal remedies were adequate and to balance the equities—all classic prerequisites to a judicial decree of injunction employed to resolve a labor dispute. The Norris-LaGuardia Act was designed to preclude this type of federal intervention into labor disputes and, as this Court held in *Sinclair*, §301 of the Taft-Hartley Act was not intended to interfere with that design.

In the instant case, no judicial intervention is being sought. Petitioner simply fails to recognize this vital distinction, treating *Sinclair* as if it applied to the enforcement of arbitrators' awards. The *Sinclair* case does not render arbitration awards unenforceable whenever they either explicitly or by implication command continued maintenance of the employment relationship. The policy of the Norris-LaGuardia Act, rationally viewed, and the intent of Congress as this Court has found it expressed in the Taft-Hartley Act, call for a different result. The correct conclusion is the one reached by the Court of Appeals in this case and by the New York Court of Appeals in the *Ruppert* case (*infra*, pp. 32-33). As has been aptly demonstrated by the many lawyers and teachers who have commented on the subject since *Sinclair*, those decisions reflect the vital considerations which require affirmance here.

POINT I

The mechanistic application of §4(a) of the Norris-LaGuardia Act urged by petitioner would subvert the stated purpose of that statute and of the Taft-Hartley Act as reflected in the emerging federal law of labor contracts.

In reaching its conclusion in No. 34, the Court of Appeals held that *Sinclair Refining Co.* v. *Atkinson,* 370 U. S. 195 (1962), did not deprive the federal courts of jurisdiction to enforce an arbitration award over the union's claim that, to do so, would violate §4(a) of the Norris-LaGuardia Act. Before we discuss the *Sinclair* decision (Point III), we address ourselves to the reasons supporting that holding.

A. The Congressional Policy in Favor of Arbitration Being Clear, There Is No Reason to Subject an Award to the Requirements of the Norris-LaGuardia Act.

In *Textile Workers Union of America* v. *Lincoln Mills of Alabama,* 353 U. S. 448 (1957), this Court held that §301 of the Taft-Hartley Act requires federal courts to enforce arbitration clauses contained in collective bargaining agreements. In that case, the employer had argued that the Norris-LaGuardia Act precluded the courts from enforcing such covenants. This Court rejected that contention in these words:

> "The question remains whether jurisdiction to compel arbitration of grievance disputes is withdrawn by the Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C. §101. Section 7 of that Act prescribes stiff procedural requirements for issuing an injunction in a labor dis-

pute. The kinds of acts which had given rise to abuse of the power to enjoin are listed in §4. The failure to arbitrate was not a part and parcel of the abuses against which the Act was aimed. Section 8 of the Norris-LaGuardia Act* does, indeed, indicate a congressional policy toward settlement of labor disputes by arbitration, for it denies injunctive relief to any person who has failed to make 'every reasonable effort' to settle the dispute by negotiation, mediation, or 'voluntary arbitration.' Though a literal reading might bring the dispute within the terms of the Act (see Cox, Grievance Arbitration in the Federal Courts, 67 Harv. L. Rev. 591, 602-604), we see no justification in policy for restricting §301(a) to damage suits, leaving specific performance of a contract to arbitrate grievance disputes to the inapposite procedural requirements of that Act * * *. The congressional policy in favor of the enforcement of agreements to arbitrate grievance disputes being clear, there is no reason to submit them to the requirements of §7 of the Norris-LaGuardia Act." (*Id.* at 457-459)

Read literally, §7 of the Norris-LaGuardia Act (47 Stat. 71-72, 29 U. S. C. §107) would deprive the federal courts of jurisdiction to issue any kind of injunction "in any case involving or growing out of a labor dis-

---

* Section 8 provides:

"No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration." (47 Stat. 72, 29 U. S. C. §108)

pute," unless certain rigorous factual tests are met. Yet the Court held, in the language just cited, that in the light of clear congressional policy, Norris-LaGuardia was not to be so read, and that "enforcement of agreements to arbitrate grievance disputes" were not to be submitted to the requirements of §7. Similarly, in any such case, §4 of the Norris-LaGuardia Act would, on its face, deprive the federal courts of jurisdiction to issue any kind of injunction prohibiting anyone from "(a) Ceasing or refusing to perform any work or to remain in any relation of employment."

Nevertheless, on a number of occasions, this Court has issued decrees requiring arbitration to determine whether continuance or resumption of the employment relationship should be compelled. In none of these decisions was §4(a) of the Norris-LaGuardia Act held to preclude enforcement of the covenant to arbitrate. See, *United Steelworkers* v. *Warrior & Gulf Navigation Co.*, 363 U. S. 574 (1960) (contracting out in violation of no lock-out provisions, resulting in layoffs); *United Steelworkers* v. *American Mfg. Co.*, 363 U. S. 564 (1960) (wrongful discharge requiring reinstatement); *General Electric Co.* v. *Local 205, United Electrical Workers*, 353 U. S. 547 (1957) (wrongful discharge requiring reinstatement); *Goodall-Sanford, Inc.* v. *United Textile Workers*, 353 U. S. 550 (1957) (discharge of employees "incident to a curtailment of production and a liquidation of plants").

By so ruling, the Court effectuated the policy embodied in §203(d) of the Taft-Hartley Act (61 Stat. 154, 29 U. S. C. §173(d)), that the "final adjustment by a method agreed upon by the parties • • • [would] be the desirable method for settlement of grievance disputes aris-

ing over the application or interpretation of an existing collective-bargaining agreement * * *." As the Court noted in *United Steelworkers* v. *American Mfg. Co., supra* at 566 "that policy can be effectuated only if the means chosen by the parties for the settlement of their differences under a collective bargaining agreement is given full play."

This "policy of the United States" is also declared in §201 of the Act in these words:

> "[T]he settlement of issues between employers and employees through collective bargaining may be advanced by making available full and adequate governmental facilities for conciliation, mediation, and *voluntary arbitration* to aid and encourage employers and the representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining *or by such methods as may be provided for in any applicable agreement for the settlement of disputes* * * *." (61 Stat. 152, 29 U. S. C. §171(b); emphasis added.)

Compliance with the arbitration award in this case necessarily required the Union to refrain from concerted refusals to work in accordance with the terms of the contract as construed by the arbitrator. As the Court of Appeals correctly concluded, its refusal to apply §4(a) of the Norris-LaGuardia Act mechanistically was fully supported by decisions of this Court requiring enforcement of the arbitration covenant in closely related contexts. No dif-

ferent result is required when the relief sought is the enforcement of an award issued pursuant to such an arbitration clause.

B. The Federal Courts Have Often Enforced Arbitration Awards Proscribing or Requiring Conduct Which Could Not Be Proscribed or Required by the Courts in the First Instance Without Violating §4(a) of the Norris-LaGuardia Act.

In *United Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U. S. 593 (1960), this Court, with a minor modification irrelevant here, affirmed a District Court's order enforcing an arbitration award requiring reinstatement of the employment relationship, saying:

> "When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. *This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations.*" (*Id.* at 597; emphasis added.)

The same result was reached in *General Drivers Local No. 89* v. *Riss & Co., Inc.*, 372 U. S. 517 (1963). There, employees were discharged because they chose to respect a picket line established by another union at their employer's place of business. Their own union asserted that this activity was protected under the contract and the dispute came before a "joint area committee" which ordered their reinstatement. The Court concluded that, if the committee's determination was in fact final and binding under the contract, the District Court had authority to enforce it.

Similarly, in *Selb Mfg. Co.* v. *International Ass'n of Machinists, District 9*, 305 F. 2d 177 (8th Cir. 1962), the Court of Appeals affirmed enforcement of an arbitration award requiring an employer to return machinery and equipment it had removed from its plant and to recall all the employees who were laid off as a result of the removal —to recreate not only the employment relation, but also the facilities without which that employment relation would have been impossible. See also, e.g., *Local 453, International Union of Electrical Workers* v. *Otis Elevator Co.*, 314 F. 2d 25 (2d Cir.), *cert. denied*, 373 U. S. 949 (1963) (reinstatement); *Local Lodge 1790, International Ass'n of Machinists* v. *Westinghouse Electric Corp.*, 48 CCH Labor Cases ¶ 18,485 (D. Mass. 1963) (contracting out).

These decisions, none of which could have been rendered by federal courts in proceedings brought before them in the first instance, bespeak the congressional policy that requires enforcement of arbitration awards directing employers and employees "to remain in [a] relation of employment." Such awards are common and, as we have shown, often arise on a claim by a union that an employer has discharged employees without just cause, has laid them off in violation of a contract, has violated restrictions on subcontracting, or has improperly removed his plant and thus severed the "relation of employment."*

* It should not matter that those awards were enforced against employers. If §4(a) had been applicable, it would, by its terms, have applied with equal force to all defendants, whether union or employer. See, *NLRB* v. *C & C Plywood Corp.*, 385 U. S. 421, 429, fn. 15 (1967); *Publishers' Ass'n of New York City* v. *New York Mailers Union No. 6*, 317 F. 2d 624, 626-627 (2d Cir. 1963), *judgment vacated in part for mootness*, 376 U. S. 775 (1964); *Clune* v. *Publishers' Ass'n of New York City*, 214 F. Supp. 520, 528-529

Enforcement of the award here in issue was nothing more than an application to a correlative area of the policy favoring final determination of contract disputes by arbitration. That policy must be so applied "if the means chosen by the parties for the settlement of their differences under a collective bargaining agreement is given full play." *United Steelworkers* v. *American Mfg. Co.*, 363 U. S. 564, 566 (1960).

C. A Contrary Conclusion Would Do Violence to Our National Labor Policy.

The decisions of this Court have thus effectuated the unequivocally expressed intent of Congress to foster voluntary agreements that result in the expeditious and final disposition in arbitration of *all* disputes arising under labor contracts. This course is precisely the one that the parties at bar agreed to follow in resolving their disputes under their agreement (No. 34, R. 115).

As this Court has noted, the labor agreement "is an effort to erect a system of industrial self-government."* The arbitrator (here a permanent umpire (No. 34, R. 14)) represents the judicial arm of this governmental structure. He is afforded wide latitude in the choice of remedies, and is empowered by the parties to issue final and binding determinations which must be enforceable on an expeditious basis if they are to be effective at all.

(S. D. N. Y.), *aff'd per curiam*, 314 F. 2d 343 (2d Cir. 1963); *Local 861, International Bhd. of Electrical Workers* v. *Stone & Webster Engineering Corp.*, 163 F. Supp. 894 (W. D. La. 1958); cf., *International Union of Electrical Workers* v. *General Electric Co.*, 341 F. 2d 571 (2d Cir. 1965).

* *United Steelworkers* v. *Warrior & Gulf Navigation Co.*, 363 U. S. 574, 580 (1960); see also, *J. I. Case Co.* v. *NLRB*, 321 U. S. 332, 334-335 (1944).

Nevertheless, petitioner would have this Court declare that awards of arbitrators are not enforceable in equity in the federal courts whenever they have the effect of prohibiting concerted refusals "to perform any work * * *." Acceptance of petitioner's rationale would place our entire system of labor arbitration in jeopardy and seriously undermine the final and binding nature of the arbitration process. Arbitrators regularly issue awards that require maintenance of the employment relationship or otherwise govern the basis upon which that relationship is to be maintained or ended.

In addition to the subcontracting, plant removal and discharge cases referred to above (pp. 16-18, *supra*), the emerging common law of the labor contract is replete with decisions to this effect. See, e.g., *Southern Counties Gas Co. of California*, 63-2 CCH ARB ¶ 8572 (Aaron 1963) (employer had the right to require employees to work overtime); *Virginia-Carolina Chemical Corp.*, 64-2 CCH ARB ¶ 8428 (Marshall 1962) (employer may unilaterally change shift work to day work and increase working hours); *Overmyer Mould Co., Inc.*, 65-1 CCH ARB ¶ 8104 (Kelliher 1964) (employees may be required to work two machines rather than one); *Brink's, Inc.*, 63-2 CCH ARB ¶ 8704 (Shister 1963) (employer could require employees to ride in back of trucks at all times); *International Smelting & Refining Co.*, 64-3 CCH ARB ¶ 9184 (Justin 1964) (employer entitled to assign disputed work to lower-rated classification); *Danner Press of Canton, Inc.*, 63-2 CCH ARB ¶ 8827 (Bradley 1963) (employer entitled to assign "boys" rather than journeywomen to assist cutters); *Archer-Daniels-Midlands Co.*, 63-2 CCH ARB ¶ 8684 (Warns 1963) (part-time storeroom work could be taken over by

supervisor); *Humble Oil and Refining Co.*, 64-2 CCH ARB ¶8567 (Larson 1964) (employer entitled to assign tool-room work to employees represented by another union in order to increase efficiency); *Lebanon Steel Foundry*, 64-3 CCH ARB ¶9052 (Seitz 1964) (employer entitled to enforce rule requiring employees to remain at work station until lunch hour).

Typically, non-compliance with these awards would take the form of concerted refusals to work in accordance with their terms; that is, concerted refusals to work overtime, to work a changed shift or increased hours, to work two machines rather than one, to ride in the back of a truck on all occasions, to perform the tasks of a higher rated classification, to do the work assigned by the employer when others are being given work claimed by the grievants and to remain at work in accordance with plant rules. In the instant case, non-compliance was effected by the Union by concerted refusals to work as ordered when gang starting times were set back in accordance with the contract as construed by the arbitrator (No. 78, R. 150).

Were federal courts stripped of jurisdiction to require compliance with the arbitrator's award in this and similar cases, employers would be limited to an inadequate damage remedy calculated to exacerbate labor relations.*

---

* Nor is the remedy to be found in State courts. As matters now stand, the removal of §301 actions from a State court either results in dismissal by the District Court or gives rise to such delay as to render equitable remedies ineffective. See, e.g., *Katz* v. *Architectural Engineering Guild*, 263 F. Supp. 222 (S. D. N. Y. 1966); *Sealtest Foods* v. *Conrad*, 262 F. Supp. 623, 625 (N. D. N. Y. 1966), noting that removal "deprived the employer of his most effective remedy and the result is the majority of those lawsuits when removed, remain on the federal dockets and wither away without further action"; *Avco Corp.* v. *Aero Lodge 775, International Ass'n of Machinists*, 263 F. Supp. 177 (M. D. Tenn. 1966);

As the neutral members* of The Special Atkinson-Sinclair Committee of the Labor Law Section of the American Bar Association have noted:

> "Discharge of the strikers is often inexpedient because of a lack of qualified replacements or because of the adverse effect on relationships within the plant. The damage remedy may also be unsatisfactory because the employer's losses are often hard to calculate and because the employer may hesitate to exacerbate relations with the union by bringing a damage action." (Report of the neutral members of The Special Atkinson-Sinclair Committee of the Labor Law Section of the American Bar Association 241, 242 (1963))

Tri-Boro Bagel Co. Inc. v. *Bakery Drivers*, 228 F. Supp. 720 (E. D. N. Y. 1963); *Crestwood Dairy, Inc.* v. *Kelley*, 222 F. Supp. 614 (E. D. N. Y. 1963); *Merchants Refrigerating Co. of California* v. *Warehouse Union*, 213 F. Supp. 177 (N. D. Cal. 1963); compare, *American Dredging Co.* v. *Local 25, International Union of Operating Engineers*, 338 F. 2d 837 (3d Cir. 1964).

In any event, if the Norris-LaGuardia Act operated to preclude federal courts from enforcing the award, it is likely that the same result would be required in State courts under federal substantive law which must be applied uniformly. See, *Teamsters Local* v. *Lucus Flour Co.*, 369 U. S. 95, 103 (1965); *Charles Dowd Box Co., Inc.* v. *Courtney*, 368 U. S. 502, 514 fn. 8 (1962). Although this issue has not been authoritatively settled, the better reasoned authorities support this view. See, e.g., *Independent Oil Workers* v. *Socony Mobil Oil*, 85 N. J. Super. 453, 459-60, 205 A. 2d 78, 81-82 (Super. Ct. N. J. 1964), holding that the Norris-LaGuardia Act is part of the national labor policy within the meaning of *Lucus Flour;* Aaron, "Strikes in Breach of Collective Agreements: Some Unanswered Questions," 63 Colum. L. Rev. 1027, 1035-40 (1963); Hanslowe, "Labor Relations Law," 16 Syr. L. Rev. 244, 256 (1965); compare, *McCarroll* v. *Los Angeles County Dist. Counsel of Carpenters*, 49 Cal. 2d 45, 315 P. 2d 322 (1957), *cert. denied*, 355 U. S. 932 (1958).

* Derek C. Bok, Dexter Delony, J. Keith Mann, Bernard D. Meltzer, Paul H. Sanders.

This report echoed these earlier comments of Professor Archibald Cox:

> "Damages are inadequate because the injury to the business cannot be measured accurately. Furthermore, an employer can rarely afford to exacerbate labor-management relations by suing a union made up of his employees after the end of the strike." (Cox, "Current Problems in the Law of Grievance Arbitration," 30 Rocky Mt. L. Rev. 247, 255 (1958))

Similarly, as Arbitrator George Moskowitz recently pointed out:

> "Employers are reluctant to resort to damage suits against unions with which they must bargain in the foreseeable future. Most recoveries would be delayed beyond the termination of the strike, and the pending suit may serve to exacerbate the relationship long after the underlying dispute has been solved. Employers want to avoid work stoppages, not be compensated for them after they happen." (Moskowitz, "Enforcement of No-Strike Clauses by Injunction," 46 Boston U. L. Rev. 343, 353 (1966))

See also, Spelfogel, "Enforcement of No-Strike Clause by Injunction Damage Action and Discipline," 17 Labor L. J. 67, 68 (1966); Comment, "Jurisdiction of Federal Courts to Enjoin Labor Disputes," 32 Tenn. L. Rev. 264, 280-1 (1965); Comment, "Quid Pro Quo in Federal Labor Law: Enforcement of the No-Strike Clause," 1963 Wisc. L. Rev. 626, 634-35 (1963); Aaron, "Labor Injunction Reappraised," 10 U. C. L. A. L. Rev. 292, 345 (1963).

As this Court recently noted in *NLRB* v. *C & C Plywood Corp.*, 385 U. S. 421, 430 (1967), "in the labor field, as in few others, time is crucially important in obtaining relief." * The reason is obvious. Economic coercion applied during extended litigation often prevents the coerced party from vindicating its legal rights or, as a practical matter, renders a legal victory meaningless. Nowhere would the time-consuming nature of this remedy be more burdensome than in discharge for due cause cases in which unions seek to require employers "to remain in [a] * * * relation of employment"; that is, to restore an employee to his job with back pay. The critical consideration here is the prompt restoration of the employment relationship so as not unduly to burden the discharged employee who may well be out of work and unpaid until the award is enforced.

In short, when the mechanistic application of §4(a) of the Norris-LaGuardia Act advocated by petitioner is viewed in full perspective, it becomes obvious that the result it would lead to is the antithesis of the expert, expeditious and inexpensive arbitral means which Congress has chosen to favor as a method for disposing of *all* disputes under labor agreements. As we shall demonstrate in Points II and III, neither the Norris-LaGuardia Act nor this Court's decision in the *Sinclair* case requires this result.

---

* Commenting on the efficacy of a union's §301 suit for damages, this Court noted that

> "If damages for breach of contract were sought, the union would have difficulty in establishing the amount of injury caused by respondent's action. For the real injury in this case is to the union's status as bargaining representative, and it would be difficult to translate such damages into dollars and cents." (*Id.* at 429 fn. 15)

POINT II

Affirmance here would not put the courts back into the business of deciding the equities of labor disputes, from which the Norris-LaGuardia Act was designed to exclude them. The arbitral process itself accomplished that end.

The Norris-LaGuardia Act was adopted in an atmosphere of resentment against judges who, under the guise of exercising their equitable discretion, were in fact deciding the "fate of an industrial controversy." The primary purpose of the Norris-LaGuardia Act—a purpose it has achieved with remarkable effectiveness—was to relieve federal judges of the "impossible task" of deciding the merits of such controversies. Professor Felix Frankfurter put it this way:

> "The whole fate of an industrial controversy may depend upon which side is the beneficiary of judicial discretion more than upon which side is acting according to law. The slant with which one reads the evidence will determine what the 'facts' are—and the unconsciousness of the slant in most cases makes its operation more decisive. Procedure thus becomes a social factor in labor litigation. In fairness to the litigants, the prepossessions of a particular judge, however disinterested, should not be allowed opportunity to determine the operation of that procedure. It will promote confidence in law in one of its most sensitive areas, to relieve a judge of the impossible task of isolating his prepossessions from his judicial temper. In controversies of this class, only the most biased judges disavow the total absence of bias."

(Frankfurter & Greene, *"Congressional Power Over the Labor Injunction"*, 31 Colum. L. Rev. 385, 410-411 (1931))

The Act was therefore adopted to take federal judges out of the business of weighing equities in existing labor disputes and issuing injunctions based on their views of such equities.

This lawsuit was not an attempt to put the courts back into that business. Quite to the contrary, under principles now well settled by the *Steelworkers* trilogy,* this case presents, not an unsettled labor dispute to be decided by the court, but the judgment of a tribunal which, having been established for that purpose, had already decided and disposed of such a dispute. The only question presented to the courts below was whether that tribunal was one of competent jurisdiction.

Nor did respondent apply for the exercise of judicial discretion, the traditional prerequisite for the issuance of the "injunction" proscribed by the Norris-LaGuardia Act. Again the *Steelworkers* trilogy makes it clear that under the federal law governing labor contracts, when enforcement of an arbitration award is sought, the courts are precluded from exercising any discretion, equitable or otherwise.**

---

* *United Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U. S. 593, 599 (1960); *United Steelworkers* v. *Warrior & Gulf Navigation Co.*, 363 U. S. 574, 581-2 (1960); *United Steelworkers* v. *American Mfg. Co.*, 363 U. S. 564, 567-8 (1960).

** See also, *Western Iowa Pork Co.* v. *Nat'l Bhd. of Packinghouse Workers, Local 52*, 366 F.2d 275 (8th Cir. 1966); *International Bhd. of Pulp Workers, Local 874* v. *St. Regis Paper Co.*, 362 F. 2d 711 (5th Cir. 1966); *United Steelworkers* v. *Caster Mold*

The *Steelworkers* trilogy demonstrates that, as a matter of federal law, when a collective bargaining agreement contains an arbitration clause, the forum for the resolution of labor disputes is not the court, but the arbitration tribunal. There, arbitrators voluntarily chosen by the parties are conclusively presumed to have exercised an informed discretion. Once such discretion is exercised by an arbitrator found by the courts to have had competent jurisdiction, nothing remains to be done but to enforce the award.

Here, the arbitrator was called upon to construe the setback provisions of an association-wide collective bargaining agreement. He decided that the contract permitted the setting back of gang starting times "without qualification" (No. 34, R. 31). Issued under a multi-employer contract, this award applied to all employers and employees covered by it and governed the relationship of the parties for the term of their agreement.* Implicit in the award is the requirement that petitioner refrain from concerted activity that would prevent members of the association from applying the contract as construed by the arbitrator.**

---

and Machine Co., 345 F. 2d 429 (6th Cir. 1965); *Local 453, International Union of Electrical Workers* v. *Otis Elevator Co.*, 314 F. 2d 25 (2d Cir.), *cert. denied*, 373 U. S. 949 (1963).

* Petitioner ignores the association-wide nature of the contract, insisting that the same dispute must be re-arbitrated whenever it arises. According to petitioner, each ship and employer represents a separate case even when the same substantive issue is involved (Brief, p. 16).

** The fundamental purpose of the arbitration process would be frustrated were the members of PMTA required to return to the arbitrator to seek relief whenever his prior award was disregarded. Such a course would allow the Union's coercive opposition to the award to have its desired effect by enlarging the time during which such coercion could be applied. The record shows that the stoppage

In these circumstances, the District Court did not issue an "injunction", nor is the controversy "a case arising out of a labor dispute." That dispute had been laid to rest by the arbitrator and the order directing compliance with the award is not an "injunction". Entirely extraneous in such a context would be findings that unlawful acts had been threatened or will be committed, or that substantial irreparable injury will occur unless the decree sought is issued, or that a balancing of the equities favors the petitioner, or that there is no adequate remedy at law, or that the public officers charged with the duty of protecting the respondent's property are unable or unwilling to furnish adequate protection.

These are the requirements of §7 of the Norris-LaGuardia Act—the very requirements ruled inapposite by this Court to an action for specific performance of a covenant to arbitrate. See, *Textile Workers Union of America* v. *Lincoln Mills of Alabama*, 353 U. S. 448, 457-59 (1957), discussed at pp. 12-13, *supra*. *A fortiori*, such requirements are equally irrelevant to an application to enforce an arbitration award. As a matter of federal substantive law, the courts are precluded from inquiring into such questions on such an application.

Thus, one has but to read the Norris-LaGuardia Act to realize that none of its procedures or safeguards are in

---

that gave rise to the instant action was attributable to a setback and was successful in that the affected member of the association was thus forced to accept the Union's position, despite the award that allowed members of the association to set back "without qualification" (No. 34, R. 39). Now, petitioner argues that this surrender under duress somehow renders this case moot (Brief, pp. 16-17).

any way relevant here. When, in accordance with the rules laid down by this Court, an arbitrator has decided and disposed of the labor dispute, the Norris-LaGuardia Act no longer has any function to perform. Indeed, once a dispute is placed before the arbitrator for a final and binding determination, the Norris-LaGuardia Act has performed the very function Congress intended it to perform: resolution of labor disputes by voluntary arbitration. Section 8 of the Act explicitly encourages the parties to settle their disputes "either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration".

It was for such a reason—the fact that the plaintiff had refused an opportunity to consent to arbitration—that this Court, in *Brotherhood of R.R. Trainmen* v. *Toledo, Peoria & Western R.R.*, 321 U. S. 50 (1944), invoked the bar of the Norris-LaGuardia Act to preclude a court from issuing an injunction against violence emanating from a strike in time of war. The Court is now told, however, that despite the expression of congressional intent in §8 of the Act, §4(a) must be read to deprive federal courts of jurisdiction to enforce the very arbitration awards which §8 treats as the favored method for finally disposing of labor disputes.

To state this proposition is to refute it. Its acceptance would defeat the purposes of the Norris-LaGuardia Act.

POINT III

The Court of Appeals correctly distinguished *Sinclair Refining Co.* v. *Atkinson*, a decision that in no way precludes federal courts from enforcing arbitrators' awards.

The relief requested in *Sinclair Refining Co.* v. *Atkinson, supra,* was an injunction to enforce the no-strike clause that would have first required inquiry into the merits of a long-standing series of labor disputes. The District Court was not asked to enforce the award of an arbitrator, but rather directly to implement the substantive provisions of the collective agreement. Under its labor contract, no grievance procedure was available to Sinclair and it could not obtain arbitration to vindicate its rights under the no-strike clause or any other provision of the agreement (see, *Atkinson* v. *Sinclair Refining Co.,* 370 U. S. 238 (1962)). There was therefore no arbitration tribunal competent to construe the contract.

In these circumstances, the employer went to court with a complaint containing three separate counts. In the first, Sinclair sued under §301 of the Taft-Hartley Act for damages caused by the last of a series of nine stoppages occurring over a period of 19 months. In the second, Sinclair sued 24 individual defendants alleging that, as union agents, officers and committeemen, they had breached the collective agreement and induced others to do so. Amongst other defenses, the unions asserted that these issues were referable to arbitration under the collective bargaining agreement and that the suit on the damage counts should therefore be stayed pending arbitration.

The District Court upheld the first count, and dismissed the second (*Sinclair Refining Co.* v. *Atkinson*, 187 F. Supp. 225 (1960)). Its conclusion was affirmed by this Court in *Atkinson* v. *Sinclair Refining Co., supra.* The Court's ruling on the first count was premised upon the conclusion that Sinclair did not have a right under the contract to arbitrate claims of violations by the unions (*Id.* at 243). As to the second count, the Court held that no action lay against the unions' officers as individuals (*Id.* at 249).

In the third count, which the Court treated in a separate and more often-cited opinion (*Sinclair Refining Co.* v. *Atkinson*, 370 U. S. 195 (1962)), Sinclair sought an injunction against the unions to prohibit repeated violations of the no-strike clause of the type that had taken place over the preceding 19-month period (*Id.* at 197-98). The unions moved to dismiss this count on the ground that §4(a) of the Norris-LaGuardia Act deprived the District Court of jurisdiction. This Court held that the federal courts were without jurisdiction to grant the relief requested; namely, an injunction to enforce the no-strike clause that would have required inquiry into the merits of a long-standing series of unresolved labor disputes.

In *Sinclair*, the no-strike clause was not enforceable in arbitration and at no time was the Court faced with the question whether the Norris-LaGuardia Act precluded the District Court from enforcing an arbitrator's award directing the unions to comply with a contractual no-strike pledge. That issue did not, and could not, have come before the Court. What came before the District Court in *Sinclair* was a raw labor dispute in which all issues remained to be determined. The courts would thus have been re-

quired, in a plenary action on the contract, to weigh the equities, to assess the nature of the damages inflicted and to determine the availability and adequacy of remedies at law. The Norris-LaGuardia Act was designed to prevent courts from engaging in just such inquiries.

The case at bar, of course, arises in a quite different context. The grievance and arbitration machinery in the agreement between petitioner and respondent not only permitted the employer to file grievances and to arbitrate a broad range of contractual issues; it also established a procedure for the expeditious resolution of such disputes.

This machinery accomplished precisely the result bargained for by the parties; namely, the final determination of sensitive issues by an expert arbitrator familiar with the modes and mores of the work place and frequently called upon to apply the collective bargaining agreement as a living document to meet the needs of the parties who must continue to live together in the volatile industrial context in which they find themselves. Unlike the *Sinclair* case, this action was not brought until the arbitrator had spoken and the Union had failed to comply with his award. And, unlike *Sinclair*, there was at this juncture nothing left for the court save to inquire into the jurisdiction of the arbitrator and into such questions of arbitral misconduct as might have been, but were not, alleged. Once the award was issued, the District Court could not reopen the merits of the dispute and was required to enforce the determination of the arbitrator; that is, to issue such a decree as would prevent petitioner from engaging in concerted refusals to abide by the contract as construed in the award.

No policy of the United States could possibly preclude judicial enforcement of the award here in issue, and cer-

tainly no such policy emerges from *Sinclair* where this Court treated arbitration as "a kingpin of federal labor policy" commenting:

> "Obedience to the congressional commands of the Norris-LaGuardia Act does not directly affect the 'congressional policy in favor of the enforcement of agreements to arbitrate grievance disputes' at all for it does not impair the right of an employer to obtain an order compelling arbitration of *any dispute* that may have been made arbitrable by the provisions of an effective collective bargaining agreement." (*Id.* at 213-214; emphasis added.)

Certainly, no such policy can be found in the Norris-LaGuardia Act itself. As this Court noted in *Lincoln Mills*, §8 evidences a congressional policy favoring the disposition of labor disputes by arbitration, precisely the course followed in this case. Finally, no such policy can be found in the Taft-Hartley Act, for sections 201 and 203 of that Act explicitly restate the policy of the United States favoring final and binding resolution of labor disputes by arbitration.

This rationale has been tested and accepted both in court and by the overwhelming weight of scholarly authorities who have considered this problem in a context involving judicial implementation of arbitrators' awards enforcing no-strike clauses. In New York, where a "little Norris-LaGuardia Act" governs, the highest court of the State, as long ago as 1958, settled this question by upholding and enforcing an award which had directed a union to end an illegal slowdown, *Matter of Ruppert (Egelhofer)*, 3 N. Y. 2d 576, 148 N. E. 2d 129, 170 N. Y. S. 2d 785 (1958)).

Holding that there was jurisdiction to enforce that order, the court stated:

> "[O]nce we have held that this particular employer-union agreement not only did not forbid but contemplated the inclusion of an injunction in such an award, no ground remains for invalidating this injunction. Section 876-a, like its prototype the Federal Norris-LaGuardia Act, was the result of union resentment against the issuance of injunctions in labor strikes. But arbitration is voluntary and there is no reason why unions and employers should deny such powers to the special tribunals they themselves create. Section 876-a and Article 84 (Arbitration) are both in our Civil Practice Act. Each represents a separate public policy and by affirming here we harmonize those two policies." (*Id.* at 581-82, 148 N. E. 2d at 131, 170 N. Y. S. 2d at 788.)

See also, *Matter of New York Shipping Assn.*, 48 CCH Labor Cases ¶ 50,973 (N. Y. Sup. Ct. N. Y. Co. 1963).

Such relief had also been granted in *New Orleans Steamship Ass'n* v. *General Longshore Workers, Local 1418*, 44 CCH Labor Cases ¶ 17,575 (E. D. La. 1962) where, rejecting the union's claim that §4(a) of the Norris-LaGuardia Act deprived it of jurisdiction, the District Court enforced an award directing the union to cease and desist from engaging in violation of the no-strike clause, saying:

> "It is true that the award of the arbitrator is based upon the 'no strike' provision in the present contract. However, the parties to the contract agreed to be bound by the decision of the arbitrator, and the plain-

tiff is entitled to have the award of the arbitrator enforced. *Steelworkers* v. *Enterprise Corp.* [363 U. S. 593 (1960)]." (*Id.* at p. 26,604)

Contra, *Marine Transport Lines, Inc.* v. *Curran,* 55 CCH Labor Cases ¶ 11,748 (S. D. N. Y. 1967), which, in our view, incorrectly applied the principles of the *Sinclair* case; cf., *Gulf & South American Steamship Co., Inc.* v. *National Maritime Union,* 360 F. 2d 63 (5th Cir. 1966), in which the court refused to confirm an award implementing a no-strike clause because the arbitrator lacked jurisdiction to determine the controversy that gave rise to the strike. In these circumstances, the relief sought fell within the ambit of the *Sinclair* case. Here, however, the arbitrator had jurisdiction under the contract to determine the controversy before him.

The *Ruppert* and *New Orleans Steamship* decisions, which effectuate arbitrators' awards implementing the no-strike clause, correctly reflect Congress's intention to establish arbitration as a kingpin of the national labor policy. As Senator Taft stated: "The chief advantage which an employer can reasonably expect from a collective labor agreement is assurance of uninterrupted operation during the term of the agreement. *Without some effective method of assuring freedom from economic warfare for the term of the agreement, there is little reason why an employer would desire to sign such a contract.*" (S. Rep. 105, 80th Cong. 1st Sess. 16 (1947); emphasis added.)

These policy considerations are valid, and indeed compelling, today and should not be affected by the *Sinclair* decision which did not involve enforcement of an arbitration award. This is the view adopted by the labor relations

bar, including those identified with the union point of view, in a series of post-*Sinclair* articles commenting favorably on the *Ruppert* case.

The 1963-64 Report of Members Representing Labor Unions* on the Special Atkinson-Sinclair Committee of the Labor Law Section of the American Bar Association, although opposing a resolution advocating reversal of the *Sinclair* decision, nevertheless accepted in substance the rationale of the *Ruppert* case, saying:

> "What we have said here is not intended to suggest that we are unsympathetic to the position of the employer whose employees strike in violation of a clear contractual commitment not to do so. We just don't believe that the problem should be subject to the type of treatment suggested by the Resolution. There may be alternatives other than those already available to the employer. For example, in the State of New York it is possible for the employer to obtain an arbitration award directing the immediate termination of a strike in violation of contract and, thereafter, with relative dispatch, have such award enforced by appropriate court order despite New York's little Norris-LaGuardia Act.
>
> "While all members signing this report do not necessarily subscribe to this method of handling the problem, all recognize that this approach would permit the arbitrator to fulfill his assigned function, and make the initial, basic determination, as the parties have agreed and intended that he do, and would require the union thereafter to discharge its own obligation under the

* Louis S. Belkin, Elliot Bredhoff, Charles K. Hackler, Mozart G. Ratner, Emil Schlesinger, David Previant.

contract. *That is what it agreed to do—to comply with the adjudication of the arbitrator as to the meaning and scope of the contract.*" (*Id.* at 238-239; emphasis added.)

The same result was reached in 1965 by the Committee on Labor and Social Security Legislation of the Association of the Bar of the City of New York which in pertinent part commented:

> "1. In *Ruppert* v. *Egelhofer*, 3 N. Y. 2d 576, 148 N. E. 2d 129 (1958) the New York Court of Appeals upheld judicial enforcement of an award barring a strike despite the state anti-injunction act. We believe a similar result to be desirable under federal law as well and consistent with the reasons underlying the Norris-LaGuardia Act. The evil at which that Act was aimed flowed in large part from injunctions granted during the period prior to the Act by courts felt to be hostile to the interests of trade unionism. • • • These objections to injunctive power do not apply to the enforcement of the award of [a] tribunal voluntarily agreed upon by the parties themselves • • • It is noteworthy that availability of relief of the *Ruppert* type enjoys support from union as well as management representatives and third parties, notwithstanding the fact that the relief would be directed against labor's strike weapon. See 1963 *Proceedings*, A. B. A. Section of Labor Relations Law, p. 238-9. There is obviously a special value to a legal rule which enjoys wide acceptance in a highly controversial area" (4 Reports of Committees of the Ass'n of the Bar Concerned with Federal Legislation, 16, 21 (1965)).

See also, Givens, "Injunctive Enforcement of Arbitration Awards Prohibiting Strikes," 17 Lab. L. J. 292, 294-296 (1966) where the author commented that

> "The touchstone of the *Ruppert* decision, that arbitration is voluntary, appears to have equal force under the Norris-LaGuardia Act, and suggests that the *Ruppert* principle may properly be incorporated into the developing federal law under Section 301. This question is not foreclosed by the holdings to date that direct judicial relief not premised upon an award is unavailable under the Norris-LaGuardia Act • • •
>
> "Further, a holding that injunctive relief is available in the federal courts in the *Ruppert* situation would relieve the dilemma in which rulings that state courts may still enjoin strikes in breach of contract create a difference in result according to the tribunal in which suit is brought. A contrary ruling might make Section 301 have the indirect effect of narrowing rather than widening the scope of relief for breaches of collective bargaining agreements, a result certainly not intended when the provision was enacted. The ancillary dilemma over whether suits for injunctive relief brought in state courts are removable to the federal courts would also be obviated to some extent.
>
> "And by strengthening the *quid pro quo* received by employers in exchange for the agreement to arbitrate, absorption of the *Ruppert* principle would encourage the already wide acceptance of voluntary arbitration. The use of arbitration processes to deal with alleged breaches of no-strike provisions, a procedure already upheld by the Supreme Court under Section 301 where the dispute is arbitrable under the contract would also

receive further impetus. The institution of arbitration would thereby be further strengthened. The *Ruppert* approach, further, allows the parties to tailor their own procedure. Provisions may be included in an agreement for accelerated arbitration under specified circumstances, including such devices as use of a stand-by arbitrator if a continuing impartial chairman is not utilized. The circumstances in which injunctive relief would be authorized could also be specified if desired by the parties.

"The incorporation of the *Ruppert* principle as federal law would thus appear consistent with Section 301, with the purposes of the Norris-LaGuardia Act, and with the demands of industrial relations and the evolving national law of collective agreements."

Similar comment is found in Yankwitt, "Injunctive Relief Against a Union's Violation of a No-Strike Clause", 52 Cornell L. Q. 132, 147-148 (1966), where, after discussing *Ruppert*, the commentator says:

"Regardless of whether one thinks that *Sinclair* is part of the federal law the states are obliged to apply under 301, there is a distinction between the order of the arbitrator, chosen by the parties and vested with authority by them, and the judicially issued injunction. Where the collective bargaining agreement has given the arbitrator the power to determine the remedy for a violation of contract, under the rationale of [*United Steelworkers* v.] *Enterprise Wheel* [*& Car Corp.*, 363 U. S. 593 (1960)] the court may find a basis upon which to rest the arbitrator's power to enjoin the violation of a no-strike clause. This reasoning would appear to apply to federal and state courts alike.

"* * * Where management and labor alike recognize these considerations and vest authority in an arbitrator to adjudicate controversies arising between them, then the arbitrator's use of the full scope of power allotted to him should be judicially approved and enforced. Indulgence should be given to the arbitrator's discretion. 'When the judiciary undertakes to determine the merits of a grievance under the guise of interpreting the grievance procedure of collective bargaining agreements, it usurps a function which under that regime is entrusted to the arbitration tribunal.'

"If the arbitrator, then, is deemed capable of wielding the power to enjoin a strike in breach of the agreement, the remaining question concerns when should he be deemed to have that authority? The Supreme Court affords the answer in *Enterprise Wheel.* The widest latitude is to be allowed the arbitrator in interpreting the provisions of the collective bargaining agreement, for 'it is [his] . . . construction which was bargained for.' If uniformity is then diminished somewhat, the resulting diversity will be based upon the parties' own choosing within the favored framework of arbitration."

Finally, Professor Summers of the Yale Law School, in a post-*Sinclair* article, poses the problem of what would happen if a union refused to obey a court order to arbitrate a grievance and strikes in order to compel the employer to accept its terms for settlement. He concludes that the courts still have power to end such a stoppage by use of its contempt power:

"In these cases the court is not simply enforcing an arbitrator's award, but is itself prohibiting the strike. The court order thus takes on many of the attributes of a labor injunction. On the other hand courts traditionally have broad powers to protect their own processes and to punish conduct which negates their orders. The union's conduct is calculated to frustrate the court's order that the dispute shall be decided by the arbitrator and that his decision shall be obeyed. The court is not enforcing the no-strike clause at the behest of the employer, it is enforcing its own order on its own behalf. *Sinclair* does not decide these cases, for in that case there was but a bare demand by the employer for an injunction to protect his private rights. The court had issued no orders to protect. If this seems a distinction without a difference, perhaps it is enough to say that when Norris-LaGuardia has threatened to frustrate responsible bargaining processes, distinctions have been made of lesser stuff.

* * * * *

"If the court should hold, as Mr. Justice Black's uncompromising language might suggest, that all federal court orders restraining strikes are barred, then the policy of promoting arbitration can not be fulfilled in the federal courts. Unions can follow the form of arbitration but deny its substance by resorting to the forum of economic force, and the only restraint will be the often inadequate remedy of money damages." (Summers, "Labor Law Decisions of the Supreme Court 1961 Term", 1962 Labor Law Section of the American Bar Ass'n 51, 64-65.).

Furthermore, Professor Summers explains that if this Court decides to limit the *Sinclair* case to its facts, the contempt process could be utilized to prevent strikes in breach of contract. "Because arbitration would be the precondition for effective protection against strikes, the employer would be encouraged to seek more comprehensive arbitration provisions. Thus, the net effect of *Sinclair*, narrowly applied, might be to lead the parties to increased reliance on the arbitral process as the substitute for economic force. The end result would be to promote the policy pronounced by the Court in *Steelworkers.*" (*Id.* at 65.) See also, Aaron, "Strikes in Breach of Collective Agreements: Some Unanswered Questions", 63 Colum. L. Rev. 1027, 1038 (1963).

The same policy considerations require implementation of the award at bar and sanction contempt proceedings to effectuate the order of the District Court requiring compliance with the arbitrator's ruling. It should not matter that in this case the award did not explicitly order the Union to refrain from concerted refusals to abide by the contract as construed by the arbitrator. No other way to vindicate the court's process has been suggested and, unless it is to be treated entirely as a nullity, no choice remains but to enforce it in contempt proceedings.

Any other conclusion would entail an assumption that it was the duty of the arbitrator to assume that his final, binding, and fully determinative award might not be so regarded and that he must therefore include in his award an affirmative direction anticipating such extra-legal conduct. No valid reason appears for treating as fatally defective an award which does not restate in rote fashion the law's demand that it be complied with. Parties should

not be forced to return to an arbitrator to secure still another award repeating the obvious: that union-sponsored concerted refusals to work in conformity with the arbitrator's earlier lawful decision must stop. The delay inherent in such an empty requirement is often all the economic pressure the union needs to impose on an employer a view that has already been authoritatively determined to be inconsistent with the governing collective agreement.

There is thus no substance to any attempted distinction between an award that explicitly proscribes concerted activity and one that simply construes the agreement and thereby implicitly precludes concerted activity in derogation of the agreement as so construed. Both types of awards should be enforced and compliance should be effectuated, if necessary, by contempt proceedings. In any event, even if there were validity to such a distinction, there would certainly be no basis for a result in these cases that would extend the Norris-LaGuardia Act to situations in which the arbitrator expressly protects his award by precluding concerted refusals to work in accordance with its terms, or expressly orders the union to cease and desist from violating a no-strike clause. The enforceability of an express arbitral mandate, the kind that occurs most frequently in no-strike clause cases, should at the very least be reserved for determination in a case involving such an award.

We repeat, however, that there would be no substance to any attempt at such a distinction. The records in these cases present a full opportunity to this Court to adopt the rationale of the *Ruppert* decision of the New York Court of Appeals and to reconcile the Norris-LaGuardia and Taft-Hartley Acts as so many learned writers agree that

they were meant by Congress to be reconciled. Adoption of that rationale implies no retreat from the decision in *Sinclair* which may be left standing to govern cases not involving compliance with arbitration awards.

CONCLUSION

The authorities lend compelling support to the proposition that the Norris-LaGuardia Act was not designed to preclude enforcement of arbitrators' awards which either explicitly or by implication preclude employees from concertedly "ceasing or refusing to perform any work * * *." They demonstrate that implementation of such awards is consonant with the policy of the Norris-LaGuardia Act and in accord with our national labor policy which embraces effective voluntary arbitration as the favored means for the settlement of *all* disputes arising under collective agreements.

The court below correctly concluded that there was no conflict in this respect between the Norris-LaGuardia Act and our national labor policy—a policy which dictates that both the covenant to arbitrate and the award of an arbitrator must be enforced whenever no misconduct or lack of arbitral jurisdiction is shown. Once this basic principle is recognized, as it was below, no further difficulty prevents this Court from holding petitioner to its bargain by enforcing the award and by permitting the district courts to

vindicate their process by appropriate measures when the judicial order of enforcement is ignored.

The judgments should be affirmed.

Respectfully submitted,

EDWARD SILVER
GEORGE G. GALLANTZ
Counsel for Tanker Service Committee, Inc. and Maritime Service Committee, Inc., Amici Curiae

Of Counsel

SAUL G. KRAMER
PROSKAUER ROSE GOETZ & MENDELSOHN

September 22, 1967